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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
THIRD APPELLATE DISTRICT
(Sacramento)

ROBERT L. EDWARDS,

Plaintiff and Respondent,

v.

JACINTA ROSE,

Defendant and Appellant.

C086490

(Super. Ct. No.
34201770002947CUHRGDS)

Respondent Robert L. Edwards sought a restraining order under Code of Civil Procedure¹ section 527.6 to restrain the mother of his daughter, appellant Jacinta Rose, from harassing him. The trial court granted Edwards's petition, ordering Rose, among other things, not to harass, stalk, or intimidate Edwards.

¹ Further undesignated statutory references are to the Code of Civil Procedure.

Rose appeals the civil harassment restraining order, arguing insufficient evidence established the necessary elements under section 527.6 and that the restraining order violated her free speech rights. She also contends the court abused its discretion in denying her the right to file a SLAPP (strategic lawsuit against public participation) motion to strike the restraining order request. Because the record on appeal does not include a reporter's transcript, we are bound to presume sufficient evidence supports the trial court's order, which did not violate Rose's free speech rights. We also reject Rose's claim regarding the SLAPP motion as the record does not show she ever filed nor did the court ever deny a request to file such a motion. We therefore affirm.

FACTUAL AND PROCEDURAL BACKGROUND

Rose and Edwards have an adult daughter together.² On October 27, 2017, Edwards filed a request for a civil harassment restraining order against Rose.

The request alleged Rose's harassment had been ongoing since 2015. According to Edwards, he and Rose have never been married, and were not in a relationship of any kind. Rose, however, continuously contacted him through telephone calls, text messages, and on social media; Rose had apparently texted and called Edwards "1000s" of times. Oftentimes the contact occurred while he was working.

Edwards included copies of past phone bills showing numerous phone calls by an "unavailable" number, which he claimed were from Rose. He also alleged that she

² Rose's opening brief contains additional facts about the nature of her relationship with Edwards, but none is supported by citation to the record. (*Alki Partners, LP v. DB Fund Services, LLC* (2016) 4 Cal.App.5th 574, 590, fn. 8 ["courts will decline to consider any factual assertion unsupported by record citation at the point where it is asserted"]; Cal. Rules of Court, rule 8.204(a)(1)(C) ["Each brief must [¶] . . . [¶] [s]upport any reference to a matter in the record by a citation to the volume and page number of the record where the matter appears"]; rule 8.204(a)(2)(C) ["An appellant's opening brief must [¶] . . . [¶] [p]rovide a summary of the significant facts limited to matters in the record"].) We do not recount the unsupported facts here.

created dozens of social media accounts on Instagram containing “offensive, attacking, and vulgar comments” about him, which Instagram had removed for violating its harassment and bullying policies. After contacting the Elk Grove Police Department about the situation, he was instructed to pursue court action.

Edwards requested personal conduct orders that prohibited Rose from harassing, intimidating or stalking him and from contacting him either directly or indirectly in any way, including, in person, by telephone, in writing, by text messages, or by other electronic means, including through social media. Edwards also requested a stay-away order that precluded Rose from coming within 1,000 yards of him, his home, his job or workplace, and his vehicle.

That same day, the court granted a temporary restraining order against Rose, prohibiting her from harassing, intimidating, molesting, attacking, striking, stalking, threatening, assaulting, hitting, abusing, destroying personal property of, or disturbing the peace of Edwards. The temporary restraining order also prohibited Rose from contacting Edwards, either directly or indirectly, in any way. The court denied Edwards’s request for a stay-away order until after the hearing on a permanent restraining order.

The hearing on whether to issue a permanent civil harassment restraining order was held on December 8, 2017. Both Edwards and Rose testified. Following the hearing, the court granted a three-year restraining order against Rose with a 100-yard stay-away order. The court ordered Rose, among other things, not to harass, intimidate, stalk, threaten, or disturb the peace of Edwards, and not to contact him, either directly or indirectly, in any way, including, but not limited to, in person, by telephone, in writing, by public or private mail, by interoffice mail, by e-mail, by text message, by fax, or by other electronic means. The court mandated that the order be entered into the California restraining and protective order system through the California law enforcement telecommunications system.

Rose timely appealed. She elected to proceed on appeal without a record of the oral proceedings of the hearing.

DISCUSSION

I

Sufficient Evidence Supports The Civil Harassment Restraining Order

Rose contends insufficient evidence supports the civil harassment restraining order. In her view, Edwards failed to show he would suffer great or irreparable harm if the restraining order was not issued because there was no violence or a threat of violence, and because evidence showing Edwards received numerous phone calls from an “unavailable” number did not establish that she engaged in a harassing or harmful “course of conduct.” She also contends insufficient evidence shows Edwards suffered substantial emotional distress. We disagree.

Section 527.6³ authorizes a person who has suffered harassment to obtain a temporary restraining order and injunction against the harassing conduct and provides an expedited procedure to obtain such an injunction. (§ 527.6, subd. (a)(1).) We review issuance of a civil harassment restraining order for abuse of discretion, and the factual findings necessary to support the protective order are reviewed for substantial evidence. (*Parisi v. Mazzaferro* (2016) 5 Cal.App.5th 1219, 1226.) “ ‘We resolve all conflicts in the evidence in favor of respondent, the prevailing party, and indulge all legitimate and reasonable inferences in favor of upholding the trial court’s findings.’ ” (*Ibid.*) “Whether the facts are legally sufficient to constitute civil harassment within the meaning of section 527.6 is a question of law reviewed de novo.” (*Ibid.*) And whether a restraining order “passes constitutional muster” is also a question of law we consider de novo. (*Id.* at p. 1227.)

³ Amendments to section 527.6, not applicable here, went into effect on January 1, 2018. (See Stats. 2017, ch. 384, § 1, eff. Jan. 1, 2018.)

“The elements of unlawful harassment, as defined by the language in section 527.6, are as follows: (1) ‘a knowing and willful course of conduct’ entailing a ‘pattern’ of ‘a series of acts over a period of time, however short, evidencing a continuity of purpose’; (2) ‘directed at a specific person’; (3) ‘which seriously alarms, annoys, or harasses the person’; (4) ‘which serves no legitimate purpose’; (5) which ‘would cause a reasonable person to suffer substantial emotional distress’ and ‘actually causes[s] substantial emotional distress to the plaintiff’; and (6) which is not ‘[c]onstitutionally protected activity.’ ” (*Schild v. Rubin* (1991) 232 Cal.App.3d 755, 762.) Section 527.6, subdivision (i), requires “clear and convincing evidence that unlawful harassment exists”

“A judgment or order of a lower court is presumed to be correct on appeal, and all intendments and presumptions are indulged in favor of its correctness.” (*In re Marriage of Arceneaux* (1990) 51 Cal.3d 1130, 1133.) “This presumption has special significance when, as in the present case, the appeal is based upon the clerk’s transcript.” (*Ehrler v. Ehrler* (1981) 126 Cal.App.3d 147, 154.) In a “judgment roll” appeal, we must conclusively presume evidence was presented that is sufficient to support the court’s findings. (*Ibid.*) “‘[T]he question of the sufficiency of the evidence to support the findings is not open.’ ” (*Allen v. Toten* (1985) 172 Cal.App.3d 1079, 1082.) We do not presume the record contains all matters material to a determination of the points on appeal unless the asserted error “appears on the face of the record.” (Cal. Rules of Court, rule 8.163; *National Secretarial Service, Inc. v. Froehlich* (1989) 210 Cal.App.3d 510, 521.) “[I]f any matters could have been presented to the court below which would have authorized the order complained of, it will be presumed that such matters were presented.” (*Riley v. Dunbar* (1942) 55 Cal.App.2d 452, 455.)

In the absence of a reporter’s transcript of the restraining order hearing, we are bound to presume sufficient evidence was presented to the trial court to support its implicit findings that Edwards satisfied the elements under section 527.6. (*In re*

Marriage of Arceneaux, *supra*, 51 Cal.3d at p. 1133 [all intendments and presumptions are indulged to support validity of order]; *R.D. v. P.M.* (2011) 202 Cal.App.4th 181, 186, fn. 5 [court presumed alleged facts were found to be true, and that a restraining order was fully supported by the evidence where the record on appeal did not contain any record of the trial court hearing].)

II

Constitutional Limitations

Rose contends in a cursory manner that the restraining order is an unconstitutional restraint on her free speech rights. In her view, the only conduct alleged by Edwards rested “ ‘solely upon “speech” ’ ” and not on any of her actions.

We disagree that calling and texting an unreceptive individual thousands of times does not involve a harassing course of “conduct.” (§ 527.6, subd. (b)(1) [“Course of conduct is a pattern of conduct composed of a series of acts over a period of time, however, short, evidencing a continuity of purpose, including . . . making harassing telephone calls to an individual”].) But even so, we conclude the restraining order does not unconstitutionally infringe on her free speech rights.

It has long been recognized that not all speech is of equal First Amendment importance. (*Parisi v. Mazzaferro*, *supra*, 5 Cal.App.5th at p. 1228.) At the heart of the First Amendment’s protection is speech on matters of public concern; purely private speech, while not totally unprotected, is of less concern. (*Dun & Bradstreet v. Greenmoss Builders* (1985) 472 U.S. 749, 758-759 [86 L.Ed.2d 593, 602-603].) And, “[n]either the First Amendment to the United States Constitution nor article I, section 2 of the California Constitution prohibits courts from incidentally enjoining speech in order to protect a legitimate property right.” (*R.D. v. P.M.*, *supra*, 202 Cal.App.4th at p. 191.) The Legislature, we note, created section 527.6 to protect individuals’ constitutional rights to pursue safety, happiness and privacy. (*Ensworth v. Mullvain* (1990)

224 Cal.App.3d 1105, 1113.) “It does so by providing expedited injunctive relief to victims of harassment.” (*Brekke v. Wills* (2005) 125 Cal.App.4th 1400, 1412.)

In this case, Rose’s constitutional challenge is not persuasive. She herself characterizes the present dispute as “nothing more than two individuals engaged in a dispute over broken promises to a daughter and lies.” Such a dispute hardly qualifies as an issue of public concern. (*R.D. v. P.M.*, *supra*, 202 Cal.App.4th at p. 192, fn. 11 [recognizing patient’s distribution of flyers about former therapist intended less as a means of addressing an issue of public importance rather than to harass the therapist]; *Brekke v. Wills*, *supra*, 125 Cal.App.4th at pp. 1409-1410 [civil harassment restraining order against teenaged boyfriend of plaintiff’s minor daughter did not infringe on freedom of speech where the speech was between purely private parties, about purely private issues, on matters of purely private interest].) Rose’s speech about such a private matter thus warrants less protection.

To the extent the order limits Rose’s speech, it does so without reference to the content of her speech, and it does not restrain her from expressing her opinions about Edwards in any number of ways. The restraining order merely prohibits Rose from harassing Edwards, including calling him incessantly, and requires her to stay at least 100 yards away from him. Such restrictions are reasonable limitations on her free speech rights.

III

SLAPP Motion

Rose argues without elaboration or citation to the record that the court abused its discretion in failing to allow her to file a SLAPP motion to strike the restraining order request. She claims that her phone calls and messages to Edwards qualify as an exercise of free speech in connection with an issue of public interest. (§ 425.16, subd. (a).)

Our review of the record reveals no evidence showing Rose ever sought leave to file a SLAPP motion or that the court ever denied such a request if made. In any event,

as explained above, the matter constitutes a private dispute about a purely private matter, and does not qualify as an issue of “public interest”⁴ for purposes of the SLAPP statute. (§ 425.16, subd. (e).) Rose, moreover, was not petitioning in any legislative, executive, judicial, or other official proceeding on an issue of public concern. She was merely harassing the father of her adult daughter by calling and contacting him incessantly.

DISPOSITION

The civil harassment restraining order is affirmed.

/s/
Robie, J.

We concur:

/s/
Blease, Acting P. J.

/s/
Krause, J.

⁴ Section 425.16, subdivision (e) defines an “ ‘act in furtherance of a person’s right of petition or free speech under the United States or California Constitution in connection with a public issue’ [to] include[]: (1) any written or oral statement or writing made before a legislative, executive, or judicial proceeding, or any other official proceeding authorized by law, (2) any written or oral statement or writing made in connection with an issue under consideration or review by a legislative, executive, or judicial body, or any other official proceeding authorized by law, (3) any written or oral statement or writing made in a place open to the public or a public forum in connection with an issue of public interest, or (4) any other conduct in furtherance of the exercise of the constitutional right of petition or the constitutional right of free speech in connection with a public issue or an issue of public interest.”